

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRENDA JOYCE LITTLE,)	
)	No. C13-1284RSL
Plaintiff,)	
v.)	
WASHINGTON STATE, <i>et al.</i> ,)	ORDER DENYING PLAINTIFF'S
)	MOTION FOR DECLARATORY
Defendants.)	JUDGMENT

This matter comes before the Court on plaintiff’s “Motion for Declaratory Judgment Based Upon 1933 Legislature’s Unconstitutional Delegation of Pure Legislative Powers.” Dkt. # 12. Plaintiff’s thirty-nine page motion begins with a discourse regarding economic substantive due process and the Lochner era, touches on the federal separation of powers doctrine, and addresses various abstention doctrines before getting to the point of the motion: plaintiff seeks a declaration that the Rules for Enforcement of Lawyer Conduct (“ELCs”) are invalid because the Washington state legislature improperly delegated legislative power to the state judiciary when it enacted the State Bar Act, RCW 2.48.010 *et seq.*, in 1933 and created the Washington State Bar Association (“WSBA”).

For purposes of this motion, the Court will assume that plaintiff’s claim for declaratory relief is not barred by the doctrine of res judicata. Nevertheless, plaintiff’s request must be denied. The Declaratory Judgment Act, 28 U.S.C. § 2201, is not a jurisdictional statute: federal jurisdiction must independently exist over the dispute. Skelly Oil Co. v. Phillips

1 Petroleum Co., 339 U.S. 667, 671 (1950); Courtney v. Goltz, __ F.3d __, 2013 WL 6224342, at
 2 *3 (9th Cir. Dec. 2, 2013). Although plaintiff discusses the separation of powers doctrine as it
 3 has been interpreted by the federal courts, her claim is that the delegation of authority that
 4 occurred in 1933 violated the separation of powers enshrined in the state constitution. Plaintiff
 5 has not identified, and the Court has not found, any federal constitutional provision or federal
 6 statute that mandates a particular division of power within state government or otherwise
 7 prescribes the method by which legislative enactments are made. As the United States Supreme
 8 Court long ago stated:

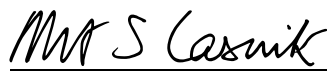
9 As the authority is conferred for the purpose of making laws for the state, it
 10 follows, in the absence of an indication of a contrary intent, that the exercise of the
 11 authority must be in accordance with the method which the state has prescribed for
 12 legislative enactments. We find no suggestion in the federal constitutional
 13 provision of an attempt to endow the Legislature of the state with power to enact
 laws in any manner other than that in which the Constitution of the state has
 provided that laws shall be enacted.

14 Smiley v. Holm, 285 U.S. 355, 367-68 (1932). Whether the state complied with its own
 15 constitutional and/or statutory requirements in enacting the State Bar Act is not a federal
 16 question over which this Court has subject matter jurisdiction.¹

18 ¹ If the Court were to entertain plaintiff's request for a declaratory judgment, it would find that
 19 the legislative creation of the Washington State Bar Association and the concomitant enumeration of the
 20 association's structure, powers, and obligations does not constitute an unlawful delegation of legislative
 21 authority. In enacting the State Bar Act (which incorporated existing provisions of law), the legislature
 22 performed its essential legislative function, establishing the association's membership, its rule-making
 23 authority, and general standards for the association's operations and admission to the bar. The WSBA
 24 was not entrusted with, nor has it sought to exercise, the power to enact laws of general applicability.
 25 Rather, the WSBA was and is authorized to make rules governing the activities of its members within
 26 the limitations established by the legislature. The separation of powers doctrine "has never been
 regarded as denying to [the Legislature] the necessary resources of flexibility and practicality, which
 will enable it to perform its function in laying down policies and establishing standards, while leaving to
 selected instrumentalities the making of subordinate rules within prescribed limits and the determination
 of facts to which the policy as declared by the Legislature is to apply." A.L.A. Schechter Poultry Corp.
v. United States, 295 U.S. 495, 530 (1935).

1 For all of the foregoing reasons, plaintiff's motion for declaratory judgment is
2 DENIED.

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4 Dated this 12th day of December, 2013.

5 
6 Robert S. Lasnik
United States District Judge